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In re Application of :
Jakuszeski et al. : **OFFICE OF PETITIONS**
Application No. 10/718,914 :
Filed: November 21, 2003 : ON PETITION
Attorney Docket No. :
09-9540-6520-0000-4 :

This is a decision on the Petition under 37 CFR 1.78(a)(3), filed May 3, 2004, to accept an unintentionally delayed claim under 35 U.S.C §§ 120 for the benefit of priority to prior filed Nonprovisional Application No. 09/933,312, filed August 20, 2001, and now U.S. Patent No. 6,749,386.

The petition is **granted**.

A petition under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2), and must be filed during the pendency of the nonprovisional application. In addition, the petition must accompanied by:

- (1) the surcharge as set forth in 37 CFR 1.17(t);
- (2) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed as unintentional; and
- (3) the reference to the prior filed nonprovisional application, supplied in an application data sheet, or as an amendment in the first sentence of the specification following the title. See 35 USC 120 and 37 CFR 1.78(a)(2). The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant pending application was filed on November 21, 2003, and was pending at the time of filing of the instant petition. A reference to the prior-filed nonprovisional application has been

included in an amendment to the first sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii).

Also, the instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Further to this, the reference to the prior-filed application was submitted during the pendency of the instant nonprovisional application, for which the claim for benefit of priority is sought. See 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. §§ 120 to the prior-filed application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

This matter is being referred to Technology Center Art Unit 3677 for consideration by the examiner of applicant's entitlement to the claim of the benefit of priority under 35 U.S.C. §§ 120 to prior-filed Nonprovisional Application No. 09/933,312, filed August 20, 2001, and now U.S. Patent No. 6,749,386, and for consideration of the Amendment, filed May 3, 2004.

Telephone inquiries concerning this matter should be directed to Petitions Attorney Derek L. Woods at (571) 272-3232.



Charles A. Pearson
Director
Office of Petitions

Enclosure: Corrected Filing Receipt